

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7114 of 2016

Arising Out of PS.Case No. -2 Year- 2015 Thana -PURUSHOTTAMPUR District-
WESTCHAMPARAN(BETTIAH)

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Rajaitu Nesa @ Rajaitun Nesa wife of Momtaz Alam, resident of Village-
Parsa, P.S.- Purushottampur, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mumtaz Alam @ Momtaz Alam, Son of Sheikh Nasim, Resident of
Village- Parsa, P.S.- Purushottampur, District- West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma, Advocate

For the Opposite Party/s : Mr. J.N. Thakur, APP

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

02/ 20-12-2017

The present application has been filed for setting aside the order dated 06.01.2016 passed by learned Sub-divisional Judicial Magistrate, West Champaran, Bettiah in Purushottampur P.S. Case No. 02 of 2015, whereby provisional anticipatory bail of opposite party no. 2 has been confirmed in pursuance to the order dated 09.09.2015 passed in Cr. Misc. No. 15975 of 2015.

It is submitted by learned counsel for the petitioner that since opposite party no. 2 has performed second marriage, hence, the provisional bail ought not to have been confirmed by the learned SDJM.



The factual matrix would unveil that opposite party no. 2 being the husband of the informant-petitioner had preferred Cr. Misc. No. 15975 of 2015 with a prayer for anticipatory bail in a case registered for the offences punishable under Sections 498A/34 of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act.

The basis accusation is of torture for non-fulfillment of the dowry demand.

It was submitted on behalf of learned counsel for the opposite party no. 2 that opposite party no. 2 is ready to keep the informant as wife with full dignity and honour, concerning which statement to that effect was made in paragraph 9 of the main petition, which reads as follows:-

“That the petitioner is ready to keep his wife with all dignity and similar was his stand before the Court below but the informant refused to live with the petitioner, which reveals from the Sessions Judge’s order too.”

While, submission on behalf of the informant was made that she is ready to accept the offer of the petitioner (opposite party no. 2) but she is apprehensive due to the past conduct of the petitioner. Thereupon, both sides agreed to appear



before the learned Court below on 01.10.2015 when the present opposite party no. 2 was supposed to take the present petitioner to keep her as wife with full dignity and honour. Accordingly, the opposite party no. 2 was granted provisional anticipatory bail for six months. The provisional bail was to be confirmed by the learned Court below in three eventualities: (i) on substantial restoration of the matrimonial harmony; (ii) or if the informant gets reluctant to reconcile the issue; and (iii) or if the informant fails to appear before the learned Court below.

The said provisional bail was confirmed by learned SDJM vide order 06.01.2016 which is under challenge in the present proceeding which reflects that the petitioner opposes the confirmation of the bail on the ground that opposite party no. 2 has performed second marriage. It appears that learned SDJM has confirmed the provisional bail on the ground that the petitioner is reluctant to reconcile the issue, which is one of the grounds for confirmation of provisional bail.

The second marriage is permissible under the Mohammedan Law and moreover, the issue of second marriage was existing, before grant of provisional bail by this Court. Moreover, the parameters for grant of bail and its cancellation are quite different. There is nothing on record to suggest that opposite



party no. 2 has misused the privilege of provisional bail.

In the circumstances, this Court does not find any merit in the present application and accordingly, it is dismissed.

(Dinesh Kumar Singh, J)

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